THAYER (H.)

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from the author

Trial for Mal-practice.

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TRIAL FOR MAL-PRACTICE.

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MESSRS. EDITORS,—The following is a report of the trial of Gustavus H. Loomis, M.D., of Putney, Vt., for mal-practice. The medical testimony is given in full, prepared by Mr. W. Wesley Wilkins, one of my students, from notes taken by himself and compared with those of Mr. Marsh, the junior counsel for the defence. To this I have prefixed a summary of the facts in the case, derived from the testimony of the other (non-medical) witnesses, and from several depositions which were presented to the court; not deeming it worth while to occupy your pages with details of no professional interest. I have closed the report with remarks on the most important points in the case. Very truly yours,

Woodstock, Vt., Feb. 22d, 1856. WM. HENRY THAYER.

On the 25th of October, 1852, in the evening, Mrs. Nancy Closson, widow, aged 57, fell down the cellar stairs of Mr. Stoddard's house in Putney, Vt. Mrs. Closson's home was in Walpole, N. H., seven or eight miles from Mr. Stoddard's house. She had been a resident of Westminster, the town north of Putney, for the greater part of the forty years previous to her injury. Dr. Campbell, of Putney, had, during all that time, been her physician, and he was immediately sent for when she was hurt. His house is three miles south of Mr. Stoddard's. He was unable to go, but sent her word he would see her in the morning. She, however, being in great pain, sent for Dr. Loomis, of Putney, who came. Dr. Campbell called the next morning, but learning that Dr. Loomis had taken charge of her, left her and saw her no more.

Dr. Loomis found swelling of one wrist, and serious contusion of one leg just below the knee, with so great swelling of the leg that it would have been impossible to ascertain, with certainty, the existence of fracture of the tibia, had he considered it proper to make a thorough examination. But, finding neither unnatural mobility nor any apparent displacement, he waited for subsidence of the inflammation before handling the part—in the meantime supporting the leg and foot and making applications to reduce inflammation.

The wrist gave no evidence of fracture or dislocation, and when the swelling about it had subsided, Dr. L. gave it no further attention.

On the eleventh day, the patient was removed to Westminster by her friends, three miles further (six miles in all) from Dr. Loomis's house—without the knowledge or consent of the physician. She rode in a wagon, sitting on the seat, with her foot resting on its side on bedclothing piled up before her. Dr. Loomis did not see her again. For seventeen days she remained without medical attendance, and then called in Dr. Kittredge, of Walpole—having in the meantime removed again, to Walpole.

Dr. Kittredge made a deposition which was read to the Court. He deposes that he found deformity of the radius, from a fracture within an inch and a half of its lower extremity, with dislocation of the ulna; and deformity of the tibia from a transverse fracture three inches below its head, and displacement of the lower fragment towards the fibula—the upper fragment remaining in place. He deposes that union of the tibia was not then complete, and that the limb could not support her weight. He deposes that he applied pasteboard splints and bandages. He did not attempt to reduce the fracture.

How long the splints were continued, we have no evidence. The limb has been tightly rolled to the present time, and the patient has never attempted to use it, but has constantly gone on crutches.

This is the case, as presented by witnesses at the trial.

Between one and two years after the injury was received, Mrs. Closson removed from Walpole, N. H., to Woodstock, Windsor Co.,* Vt. After remaining there long enough to acquire a legal residence, she entered actions for mal-practice against Drs. Campbell and Loomis in the Windsor County Court. She then returned to Walpole to reside. When the case of Dr. Campbell was to come to trial, she withdrew the suit against him in Woodstock, and commenced one in Keene, N. H.

Dr. Campbell was tried in Keene in October, 1855, and acquitted. The suit against Dr. Loomis was tried at Woodstock, Vt., in the December term of 1855, before Judge Underwood. Messrs. Tracy of Woodstock, and Marcy of Royalton, were counsel for the plaintiff; Messrs. Washburn and Marsh, of Woodstock, for the defendant. The jury brought in a verdict for the defendant.

The grounds of accusation were, mal-treatment of the case and unjustifiable desertion of the patient. The counsel for the plaintiff attempted to show that the displacement of the tibia could not have taken place during her removal; as it would have been attended with so much pain that it must have been evident to the patient "that something extraordinary had taken place." Whereas she testified that there was no particular increase of pain at that time, as she was already suffering nearly all she could bear. Her counsel therefore contended that the displacement must have existed

* Putney, where she was hurt, is in Windham County, Vt.

from the first, and ought to have been discovered by the physician. And, in their argument, these learned gentlemen ridiculed the idea that a blow severe enough to produce a transverse fracture of the tibia, would not displace the fragments, while such displacement might take place gradually and even without producing any peculiar sensations, in the course of a ride of three miles, eleven days later; a singular instance of ignorance and weakness of mind, that substitutes partizan presumption for the evidence of experiment and experience. It is well for the ends of justice and truth that there are many lawyers whose mental culture extends beyond mere legal technicalities. Law and common sense are said to be synonymous. We have no doubt they are—but such men are not true exponents of the law.

Medical Evidence.

Witnesses summoned by Defendant.

Gustavus H. Loomis called.*—I am defendant in this suit. Have practised medicine and surgery for nine years. I was first called to visit the plaintiff on the night of the 25th of October, 1852, between the hours of 10 and 11 o'clock. I saw her at John H. Stoddard's house in Putney, Vt., between the hours of 11 and 12 o'clock. I found her lying on a sofa. Her friends said she had fallen down cellar. She appeared in a very nervous and excited state. I made a very slight examination of the leg when she was lying on the sofa. Assisted in carrying her to the bed. I think I examined the arm before moving her. After she was placed on the bed, I passed my hand over the limb; it was very much swollen—more than I ever saw in such a case before in so short a time. I examined her by passing my hand over the bone and by looking at the limb. She was quite fleshy. I deemed the best course to pursue was to place the limb in an easy position, and try to reduce the inflammation and swelling.† I placed a pillow under the knee, and supported the limb so as to make it as easy as possible. I treated it as though it had been a fracture. I thought it might be a fracture. Gave an anodyne, and applied a cooling lotion. I rotated the wrist, bent the fingers, flexed the wrist and extended it. She could adduct and abduct it. She complained of some pain, but I could not detect any displacement. I treated the wrist with a flannel roller and applied cooling lotions. Used flannel, as this would retain moisture longer. I left her comfortable. I gave her no opinion—I mean no direct one. I said to one of the attendants, if the small bone of the leg was broken and high up, it would take care of itself, and would not need a very extensive examination. Should think I was there three or four hours. Accident occurred on Monday, and this was early Tuesday morning. I saw her again near the mid-

* Both plaintiff and defendant were on the stand in this case. By Vermont law, all parties may be witnesses in a suit.

† *Inflammation and swelling* are repeatedly spoken of in the evidence, because understood by the counsel as distinct in meaning.

dle of the day. Was as comfortable as could be expected. Treatment continued. Leg more swollen; more discoloration. Wrist much the same. Too much swelling to make a correct diagnosis. Did not see her on Wednesday, because my own health was poor, and I thought she would get along as well. I saw her again on Thursday. There were blisters on the leg; more inflammation; skin shining. Blisters were from the size of a fourpence-half-penny to that of a pin's head. The foot was somewhat swelled. Inflammation was more extensive. I directed a yeast-poultice to be applied to the part. I did not advise this before. I put this on, as there were symptoms denoting a tendency to mortification. There was no poultice on when I came. I did not examine the limb to ascertain whether there was fracture, as it would have been necessary to press the limb hard enough to have felt the edges of the bones, and move the limb so as to produce crepitus; and this, in the already excited state of the parts, might have produced gangrene. I felt confident that if there was fracture, the bones were in apposition. I applied liniment to the wrist. I saw her again on Friday. She was better. Her whole condition better. Her leg had not increased in size. Blisters were no worse. Did not make an examination, for the same reasons that I did not yesterday. Examined the wrist; could detect no fracture. I again saw her on Saturday; the swelling had gone down a very little on the leg; not any on the knee. Discontinued the yeast-poultice. The blisters had disappeared, and the general appearance was better. I made no examination, because I did not think it safe. The limb did not show any departure from the proper direction and natural position. There was no apparent deformity. What force was used in my examinations of the fracture had not shown that there was any motion in the bones. She said on Saturday that I need not trouble myself any more about her wrist, as that was well enough. She had all the motions free in it, and after this day I did not examine it. I next saw her on Monday. The leg was improving; the swelling had gone down a very little; but I did not make any examination, for the same reason as before. I again saw her on Thursday. I did not make any examination. Her leg was in the same position as at the previous visits; the inflammation was less. There was something said about her being moved. I declined giving my consent, on this occasion, and at all times. I told them I would be there on Friday or Saturday and make a thorough examination, and determine about her moving; and when she was moved, I wanted to be there myself, and see to it, and fix it up. They said "yes, she must be bandaged, of course." I said to them that that would not do; I must see to it myself. I went there again on Saturday, and was then informed that she had been moved. I had not been informed that she was going to be moved. I had never given my consent to her being moved at any time. I did not know where she was going. I was told, after she was gone, that she was at Mr. Floyd's, a distance of six miles from my house. I never saw her

afterwards professionally. I was never asked to attend her after she was moved, nor did I suppose that I was expected to do so. I supposed she was in the hands of her own physician. I never put any bandages or splints to her leg. The use of splints is to keep broken bones in apposition. In this case I think bandaging might produce mortification. Bones begin to unite in from nine to twelve days, as a general thing; but this would be affected by the health and age of the patient, and other circumstances. In the plaintiff's case, with her health, I should expect in a common simple fracture that union would commence in from twelve to twenty days—say fourteen or sixteen days. In such a case as this, I think the inflammation should somewhat subside before reducing the fracture. The size of the broken ends at the point of fracture would tend to keep the bones in place; or it would not be so liable to displacement as if they were smaller. Where there are two bones in a part, as in the forearm and leg, the unbroken bone operates as a splint. There was no displacement of the fibula. If bones are in place and the direction of the limb is right, no further examination is necessary. It would make a great difference from what part of the wrist-joint Dr. Kittredge measured.* The nearer to the wrist-joint the fracture was in the radius, the more difficult would it be to diagnosticate, and the less would be the danger of displacement.† If a patient was moved that had such a fracture as the plaintiff, without preparation, I should expect displacement. By preparation I mean splints. If the reasons for moving were very urgent, I would have her limb splinted, and have her moved as easily as possible. If the patient must be moved, in a case of simple fracture where there is no great inflammation, the sooner she is moved the better. After reparation had begun, it ought not to be allowed. If bones are in apposition, and they can be kept there without, it is as well not to use splints as to use them. A simple fracture is where there is no communication with the external air through the soft parts.

Cross-Examination.—I have testified in this case once before. I cannot say that I then stated anything about gangrene. I think I then said there was not much deformity or swelling at the wrist. I made no thorough examination, because I deemed it to be imprudent, on account of the inflammation; and if there was a fracture, it might produce displacement or extreme irritation and inflammation. She might or might not have any great amount of pain in moving. This might depend on the amount of nervous sensibility. I thought it would not be safe to move the limb. Moving of the limb would be apt to produce irritation under any circumstances. I did not know where the house was where Mr. Floyd lived. I did not know Mr. Floyd. They were strangers to me entirely. I had practised in that neighborhood. I had,

* Referring to Dr. K.'s deposition that there was fracture of the radius an inch or an inch and a half from the joint.

† The testimony was in reference to *transverse* fracture.

I suppose, attended a patient in Mr. Floyd's house. How long before, I do not know. I universally refused to give my consent to her being removed. I called on Mrs. Closson once at Walpole. I did not call professionally, but because I heard a rumor about there being broken bones. I found them fractured; the tibia of the leg, and the radius of the arm. There was a decided deformity.

Direct Examination resumed.—I went to see the plaintiff, and staid there some twenty minutes. There was not much swelling. I could see there was a crook where it ought to be straight. When I last saw her there was no such crook. If there had been such a crook, I should have seen it when she was at Putney. If I were going to move her, I should prefer a litter.

John Campbell called.—I reside in Putney. I am a practising physician and surgeon. I was called on the night of October 25th, 1852, to see Mrs. Nancy Closson, the plaintiff in this suit. I saw her the next morning. I went into the room. I did not move the limb. Her leg was swollen and a good deal discolored. It was in a good position and well supported. I was about to run my hand up on the leg, and she objected. I judged that the leg was not out of place. It had none of the appearances that it had at Walpole some ten or twelve weeks afterwards. I think I should have noticed it, if it had been out of place as at Walpole. There appeared to be a good deal of nervous sensibility. I should not have thought it good practice to have made a thorough examination. I have known Mrs. Closson for twenty years. She is of a nervous temperament and a scrofulous habit. I have attended her during several severe fits of sickness; one of epidemic erysipelas. She at one time had a functional heart-difficulty. Union between broken bones takes place in from ten to twenty or twenty-five days. In this case I don't think nature would have done much in less than fifteen days. The time would increase with age, and be modified by constitution and habit. Splints are for keeping bones in apposition. They are a necessary evil. Where there is great inflammation, splints and bandages may produce gangrene. We should do without them when we can—that is, when the bones will remain in place without them. I have had to take off splints and bandages after I have put them on. From the breadth of surface of the broken bone, the fracture would not be easily displaced. The fibula in this case would serve as an excellent splint. I would delay examination in such extensive inflammation until the inflammation had in a great measure subsided. The position was a good one; the limb was flexed just enough to relax the muscles. If the patient was put into a wagon, placed on the seat, and moved in this way, I should expect displacement of the bones. The nearer a fracture is to the end of a bone, the less likely it is to be displaced, and the more difficult will it be to make a correct diagnosis. A fracture of the radius within an inch or an inch and a half of the wrist-joint, may not affect the motions of the hand as much as a severe sprain. In case of transverse fracture of the radius, the ulna

would not necessarily be dislocated, and if it was dislocated there must be displacement of the radius.

Cross-Examination.—I made no particular examination. In an ordinary case, the practice is to reduce the limb as soon as the surgeon is called. It depends on the constitution of the patient, the condition of the limb, &c. I usually prefer doing it at once, when it can be done. When the fracture is oblique, there is more danger from spasms of muscles. If such a patient was to be moved, splints should be put on the limb. If the bone was displaced during the journey, the pain caused by it would be discernible.

Direct Examination resumed.—I did not examine the bone very critically at Walpole. The visit was a short one. It is my impression that Dr. Loomis invited me there. There is very little danger of displacement in a fracture like this, when the patient is asleep. If I rotated the hand, flexed and extended it, and felt the bones with my fingers, I should think it was a sufficient examination.

Wm. Henry Thayer called.—I am a practising physician and surgeon. Have been in practice twelve years. Am professor of pathology and the practice of medicine in the college in this place. I teach anatomy during the winter term. When a surgeon is called in a case of injury, it is his first duty to make as thorough an examination as the circumstances of the case will allow; and ascertain, if possible, whether there is a fracture, and, if so, its nature and extent. The ordinary symptoms of fracture are displacement and unnatural mobility of the bone. There may be fracture without displacement. There would be more difficulty in determining whether there was or was not fracture, in such a case. The liability to displacement would be affected in this case by there being another bone in immediate relation with the fractured one. The two bones of the leg are bound together by strong ligaments, which make them like one bone. There is not so much tendency to displacement, where the tibia is fractured near its upper extremity, from the greater size of the broken ends at that point. If the fracture was occasioned by a direct blow, I should expect swelling of the soft parts to follow at once. In a case like the plaintiff's, I should expect considerable swelling, and that it would commence immediately after the injury; and if the surgeon was called in three or four hours after the injury, it might be impossible to determine with accuracy whether there was a fracture or not. In such a case as the plaintiff's, the surgeon ought not to handle the soft parts; he should disturb them as little as possible—that is, in a case like this, where there is no material displacement. There being no apparent displacement, and much swelling in the surrounding tissues, the surgeon's duty is to place the limb in as easy a position as possible for the patient, and make such applications as will tend to alleviate the pain and reduce the inflammation. The surgeon may make an examination when the inflammation has in a great degree subsided, and he should not do so before that time. No union of the bones can

take place while there is great swelling and inflammation* in the parts, and these should be first reduced. The object of splints is to keep bones in apposition. In regard to the proper position for the leg, there might be a difference of opinion. I think the position was a good one. It is good practice in some cases to dispense with splints. It would be bad practice to use splints where there was great swelling and inflammation around the fracture. Splints cannot be used without bandages. It would not have been proper to apply splints in such a case as was testified to by the defendant. To have used them in the condition in which the plaintiff then was, would have endangered the safety of the limb. The use of splints would not have been indicated until the inflammation had in a great measure subsided. No displacement could well take place in a fracture such as this is shown to have been, while the limb is at rest. There is no force in the limb itself to draw the fragments from their proper relations, with the exception of one muscle (the popliteus); and that could only affect the upper fragment, as it is inserted into the upper fifth of the tibia. The upper fragment would not be likely to be displaced, from the fact that it is held in position by strong muscles. The other muscles† run parallel with the shaft of the bone, and consequently could not affect its fragments in a manner to produce displacement. I would account for the displacement in this case, by the removal of the plaintiff without the limb being sufficiently supported. The plaintiff might have been removed carefully after putting on splints and bandages, without producing displacement. In a case such as the plaintiff's, I should expect such removal as was testified to, might produce displacement. I should not expect any dislocation of the fibula from the removal. I heard the defendant's testimony in regard to his treatment of the leg. I think his treatment was good, as he has stated the facts. A fracture of the radius near the wrist joint is not so easily discovered as one farther up. Such an one is sometimes very difficult to detect. On being called to see a wrist that had received an injury, I should first examine it with the eye to see if the bones were in place. If I could not satisfy myself by this, I should pass my hands along the edges of the bones, and observe the motions of the joints. If there was no apparent deformity, and I could detect no evidence of a fracture, by passing my hands over the bones, and the motions of the wrist were free, I should keep the part quiet, and make such applications as would tend to reduce the inflammation. The highest medical authority says that a fracture of the radius occurring as near the wrist-joint as it appears to have been in this case, is sometimes very difficult to detect, and will sometimes exist without displacement of the fragments. If the ulna had been dislocated, it would have been most probably thrown either backward or forward, producing so great a deformity either on the back or in the

* *Inflammation* is not understood by lawyers to include swelling; hence the phraseology of testimony here and elsewhere.

† *Meaning*, all but the popliteus.

palm of the hand as could not be overlooked by a surgeon. Subsequent displacement of the fractured ends of the radius would not of itself dislocate the ulna. It would require some new injury to occasion it. The surgeon having made up his mind that there was no fracture, the inflammation having subsided, and no complaint being made by the patient, I do not think there was any necessity of his making another examination. Spasmodic contractions of the muscles will occur from the effects of displaced bone on the surrounding tissues. They may occur at any time, according to the circumstances of the case. I do not consider it probable that the tibia could have been displaced by the spasmodic action of the muscles. Displacement is very unlikely to occur when the patient is quiet in bed. She is not likely to move her limb when it is in the state described. She might, if she were delirious or in a state approaching to delirium.

Cross-Examination.—Displacement of the tibia, as it exists in the plaintiff's case, would not be likely to occasion spasmodic muscular contractions. Such displacement will not necessarily produce pain. Pain does usually attend the displacement of the fragments occurring at the time of fracture. It is possible for displacement of the fragments to take place at a subsequent period, without pain—particularly if gradual. I presume pain always occurs when a bone is broken. I think severe pain will be felt when a broken bone is projected into the flesh. A displacement might have taken place during the removal of the plaintiff, without her experiencing any additional pain. I think she would know that something extraordinary had taken place—from the motion of her limb in its inflamed state, whether displacement of the broken bone occurred or not. The immediate result of such a displacement would very likely be to increase the inflammation of the limb, and affect her comfort. This effect would probably continue several days. There is sometimes great difficulty in detecting a fracture of the radius near the wrist-joint. I have never seen a transverse fracture of the radius within an inch and a half of its lower extremity, and without displacement of the fragments. There is no medical writer, except one, as far as I know, who mentions such a case. But we have his authority, which is great, for the occurrence of such fractures and the great difficulty* of their detection. In a case like this, it is the surgeon's duty to watch the limb, and make an examination when the proper time comes. Nothing the patient may say in regard to the injured part, can excuse him from making an examination, if he thinks it necessary to do so. Dislocation of the fibula is less likely to occur than fracture of it; any force applied to it would sooner break than dislocate it.

Direct Examination resumed.—Had a dislocation of the upper extremity of the fibula existed at the time Dr. Loomis saw her, it might not have been discoverable on account of the swelling. It

* The *difficulty* depends upon the absence of displacement of the fragments, and the *rarity* refers to the same point.

is not the duty of a physician to continue in attendance on a patient who removes her place of residence, unless he is requested to do so. A displacement like that now existing in the tibia did not necessarily occur all at once, by any sudden action. It is more likely to have been gradual, and probably took place in that manner during her removal.

2d Cross-Examination.—If a physician is in attendance on a patient, and is informed that she is to be removed, it is his duty to follow her, or give notice that he will not do so.

Ptolemy Edson called.—I am a practitioner of medicine and surgery. I have been in practice forty-five years. The duty of the surgeon when called to see a patient where there may or may not be fracture, is to make an examination at once. If not called until after swelling and inflammation have taken place, he must make a slight examination only. If there has been injury of the soft parts, more swelling takes place. If there is much swelling, he should put the limb in as quiet a condition as possible and apply cooling lotions. Fracture without displacement is very common in transverse fractures, and especially in parts where there is another bone. If the fracture is near a joint, it is very difficult to detect; and if there be much swelling, it may not be determined without using such force as would be an injury to the patient. The examination should not be made until the swelling and inflammation have subsided in a great measure; for the reason that union will not take place while the parts are in such a highly inflamed state. Splints are used to keep bones in place. When there is another bone in the part, it furnishes one of the best splints we can have. Splints may often be dispensed with. When splints are used, bandages must also be applied. I think Dr. Loomis treated the limb in this case right. I think a patient, in such a case as this, ought not to be moved for the first eleven days. If it was absolutely necessary, she should be moved on a litter. If moved in the manner shown by the testimony, I should fear displacement. I never saw a case in practice, of fracture of the radius within an inch and a half of the wrist-joint, without dislocation of the ulna. We have very few accounts of such in medical books. It is very difficult to discover fractures of the radius at this point. The usual way to detect it, is to observe the motions of the wrist and hand, and this is not always sure. In a case like this, as testified by the defendant, if I could discover no displacement, I should place the arm in as quiet a position as possible and apply cooling lotions. After I had examined it once, I should not probably examine it a second time, if I heard no complaint.

Cross-Examined.—When there is a dislocation of one bone and a fracture of another, I should reduce the dislocation and apply splints. I use splints more than is usually done now. If there is dislocation, the eye will detect it at once; as the joint will be thrown out of shape. Should think if the displacement of the tibia took place all at once, the patient would think something extraordinary

had taken place. It might be displaced gradually. If displacement took place some time after the fracture, it might occasion only slight swelling. The pain would subside soon after the displacement—in an hour or two.

Edwin Hazen called.—I am a physician and surgeon. I have practised medicine thirteen years. I have seen the plaintiff, and examined her wrist and leg. I found indications of a transverse fracture at the wrist. There is no apparent dislocation of the ulna, and no evidence of any dislocation ever having taken place there. The ulna is a little more prominent than usual, from the hand being carried more to the radial side of the arm. I found evidence of a transverse fracture of the tibia about three inches below the knee-joint. I measured both limbs. There is no evidence now that there has ever been any dislocation of the fibula. I think it would have broken rather than its ligaments have given away. I heard Dr. Loomis testify. I think his treatment of this case was correct.

Cross-Examined.—I think the examination would not be so satisfactory as one made six or eight weeks after the accident. If the fibula had been dislocated, there would have been more deformity than there is.

Direct Examination resumed.—If the fibula was dislocated, and not reduced within a few weeks from the time of injury, it would present the same appearance now. She had her leg bandaged from the foot to the knee, with a book cover under the bandage. She said it was to reduce the pain. I think the bandages have had a bad effect on the limb. The muscles have grown smaller—are atrophied.

Witness summoned by Plaintiff.

Thomas E. Powers called.—I was called about ten days ago to go and see the plaintiff. I examined both her leg and arm. I discovered that there had been a fracture of the upper part of the tibia, and there was a lateral displacement of about one quarter of an inch. The upper end of the lower fragment had been carried toward the fibula—it may be from a quarter to a half an inch. It has united in the situation I have described. I have practised medicine and surgery for twenty-eight or twenty-nine years. I was not able to make up my mind that there was any dislocation of the fibula. I examined the wrist, and found the radius had been broken about an inch and a half from the joint, and the upper fragment carried towards the ulna. There is a deformity there now. At the first examination I made, I thought there had been no dislocation of the ulna; I have since examined it and I think there has been a dislocation of the ulna. I don't see how this deformity could exist, unless there had been such a dislocation. I think there is nothing unusual in a fracture at this point. If there was not much swelling, there would not be much difficulty in detecting fracture at this point. When no bone is broken, but only a bruise, I should suppose a removal could be made without difficulty. If

the leg was fractured, a removal would tend to produce inflammation and swelling.

Cross-Examined.—I think a sudden displacement would produce more immediate pain than if it was gradual. The broken ends project in towards the ulna. I think the deformity is too much for a simple fracture. It is difficult to tell whether there was any dislocation of the ulna or not. A fracture might exist in the radius, and the ulna be dislocated, and still the patient might be able to give a rotary motion to the hand. The mere fact of pain in rotating the hand, would not of itself indicate whether it was a fracture or a sprain. There might be difficulty in determining where the fracture now is; and a difference of opinion as to where it is.

The two main points at issue in this case, were the correctness of the surgical treatment by Dr. Loomis, and the propriety of his discontinuing his attendance after the patient's removal. In regard to the second point, no opinion was given by the medical witnesses—the questions put to them by the plaintiff's counsel having reference to circumstances which did not exist, namely, what would be a surgeon's duty in relation to continued attendance on his patient who had removed her place of residence, *having previously informed him of her intention to do so?* It had been testified by Dr. Loomis himself, and deposed by the nurse, that when Dr. Loomis became acquainted with the general desire of the patient to be removed as soon as she was able, he had uniformly discouraged it, and had said, that, should it become unavoidable, he must come and apply splints and rollers to the limb. He had never been called upon to do so, and when, therefore, on one occasion he came and found the patient gone, he was fully justified in considering the contract between them to have been annulled by the act of the patient herself. If bound to follow her to the next town, why not further? Where is to be the limit? And this was the view taken by the counsel for the defence.

The other point—the correctness of the treatment—included the propriety of omitting such an examination of the leg as would determine absolutely the existence of fracture of the tibia, the propriety of omitting the application of splints to the limb, and the justification of the surgeon in not discovering the fracture of the radius.

On these three points, the testimony of the physicians who were called upon the stand had reference to the case in hand. As to the time for learning exactly the state of a fractured bone and reducing it, every surgeon knows that to put the fragments in place is the readiest mode of reducing inflammation. But in the transverse fracture of one bone of the leg, where there appeared to be no displacement, and it was hardly possible, from the anatomical arrangement of the parts, that any should exist, there is no reason

for handling a limb—already very much swollen by serious contusion—as roughly as would be necessary to discover such a fracture as existed in this case. It would be the worst practice to do so.

John Bell is very strong on this point. The "Principles of Surgery," by that acute surgeon, contains a paragraph which I shall quote entire, as it refers to several points at issue in this case. "In fractures of the lower extremities there is no occasion for bandages, for the patient lying in bed, the part is in no danger of being moved. Unless you could invent a machine which could enable a patient to walk or stand upon his leg, you need none. In all fractures of the leg, then, simple as well as compound, you merely lay the limb out upon its pillow or splint; nothing but convulsions, delirium or mania, can endanger the fracture or require bandaging. In laying a fractured leg, where but one bone is broken, you need be at no pains about the posture; if the leg lie easy, and the patient complain of no pain, all must be right; but when both bones are broken, you must be at pains to trace the sharp line of the tibia with your finger—for that regulates the posture of the leg. This you cannot do at first, because the general swelling hides the bone, but you have no fear of altering the posture of the limb, and you know that the subsiding of the swelling marks the proper period for ascertaining the posture of the limb."*

So Sir Charles Bell says, "when swelling has arisen, an examination of the position of the bones will be found impracticable." I shall be pardoned, I trust, for referring to several good authorities on this point and the question of the use of splints, although it is well known that there is no difference in the practice of surgeons in this respect.

John Hunter says, "splints should not be applied till after inflammation has subsided." Nathan Smith warns his reader against the application of splints in such a way as to produce injury by their pressure. Dr. Hayward, in his volume of Surgical Reports, page 82, speaks of pressure as liable to cause ulceration or sloughing. Mr. Fergusson says that in certain cases (where there is great injury of the soft parts) it is necessary to do without splints. Mr. Cooper, in his Surgical Dictionary (p. 378), says, "when the fragments are not out of their relative position, the surgeon must strictly refrain from all avoidable disturbance of the limb." In South's translation of Chelius (Vol. I. p. 556), we have the following remarks. "No fracture (collar-bone and oblique fracture excepted) should ever be set, that is, put in splints and bandaged, till after three or more days, or, more properly speaking, till the swelling has ceased, and nearly or completely subsided. * * * * Therefore, all that should be done at first, is, to lay the limb upon a pillow, in a position which gives the patient the greatest ease and soothes the irritability of the muscles."

We have thus discussed the first and second points—upon which

* Principles of Surgery, by John Bell, New York Edition, 1810, p. 128.

the daily practice of all good surgeons is sustained by the highest authorities among surgical writers.*

The third point relates to the fracture of the radius. A *transverse* fracture of the radius within an inch and a half of the lower extremity, *without displacement of the fragments*, and without dislocation of the ulna, is a very rare occurrence. So much so, that I am not aware of any author except Chelius who makes any mention of it. But we have his authority for saying that it does occur, and that it is extremely difficult of recognition.

Had the fracture been oblique, as it usually is, there would, in most instances, have been displacement of the fragments at once, and the nature of the accident could not have escaped the observation of the surgeon; but the fragments were probably so intimately engaged at their surfaces, that, in the absence of any physiological force to draw them asunder, they gave no crepitus nor indication of mobility. They became gradually displaced after the limb had passed from the observation of the surgeon and the patient began to use her hand. It was then that the nurse first noticed that the wrist was "growing out."

I have referred to Chelius. The following remarks are taken from South's translation of Chelius, Vol. I., p. 611, American Ed. "Fracture of the radius is mostly consequent to a fall on the hand, when the arm is outstretched; in which case it usually happens in the middle of the bone. More rarely it is produced by direct violence.

"The diagnosis is not difficult; the seat of fracture is felt, and, during pronation and supination, crepitation also. The fractured ends turn towards the cubit. *Only when the fracture is near the lower end of the bone is the diagnosis difficult*, and its confounding with sprain so much the more possible, as *frequently at the first there is scarcely any or no distortion of the hand, nor is its motion interfered with.*" Whereas, when displacement has occurred, he says "pronation and supination, bending and violent straightening of the hand, are very painful and restricted, &c. &c." It is inevitable, from analogy with experience of other fractures, to believe, that if in addition to the fracture being near the lower extremity of the radius, it is also *transverse*, the possibility of its occurring without displacement becomes a strong probability.

Thus much for the case as it was presented at the trial. The jury found no difficulty in bringing in a verdict for the defendant, and he was declared not guilty. It now becomes us to inquire if there was anything in the condition of the woman—irrespective of the connection of Dr. Loomis with the case—which justified an action for mal-practice. Had she sustained any injury? Was she in any degree lamed or deprived of the full and free use of her

* If the object be attained, namely, the keeping the fragments in apposition and at rest, it matters not how it be done. Where splints are inadmissible, the double inclined plane in fracture of the femur, or pillows and cushions in a case like this, are the proper thing. The case was treated as if it were a fracture, thus giving the patient the benefit of the doubt.

leg? These are extremely important questions, and had they been put to the medical witnesses on the stand, not one of them would have answered them in the affirmative. The tibia is broken transversely, and one fragment is displaced laterally to the extent of more than a quarter and less than half an inch, leaving the surfaces in apposition over an extent of three fourths of an inch at the least. Union takes place. And every surgeon knows that the tibia will be as strong as ever—that, after eighteen months, if another accident were to produce fracture of the bone, it would be as likely, and probably more likely, to take place anywhere else than there. Why, then, is she still a cripple? Why does she come into court on crutches? Because of the subsequent treatment of the case. The physician at Walpole, N. H., who saw her twenty-eight days after the injury, applied splints and rollers. The bandage has been continued to the present time—whether by his advice or not I am not informed, and it did not appear in evidence. But that the steady bandaging and the entire disuse of the limb are the exclusive and sufficient causes of its present useless condition, there can be no doubt. Dr. Hazen testified to the manner in which a roller was worn upon her leg; he was the only witness, except Dr. Powers, who had an opportunity of examining her.

The confinement of six or eight weeks which every patient with fracture of the leg necessarily undergoes, leaves him with atrophied muscles and stiff joints, and his first steps are always taken with pain and difficulty. How, then, can it be otherwise when three years have elapsed instead of two months? It does not require disease to produce the same results; false anchylosis and muscular atrophy will follow simple disuse. Had the woman remained under the care of Dr. Loomis, and begun to use her leg at the proper period, there is no reason to doubt that she would have regained its use in a short time. And had she recovered with just the deformity that now exists, a jury would hardly have considered the deviation from the normal line of the bone to have been sufficient ground for damages. But even this deformity would hardly have occurred had the patient been under medical care.

It is very evident that the physician at Walpole did not consider the deformity a very serious matter, for he did not propose to reduce it, although he saw it when the amount of union must have been very slight—being only seventeen days after the displacement probably took place, and only twenty-eight days after the injury. Had he thought it an important matter, he would, of course, have broken up the callus and restored the fragment to its place. There can be no doubt that this gentleman knows what is good practice in such a case, for his own deposition—which was read in court—stated that he had been many years in practice, and that *his leading branch is surgery!*

The mal-position of the tibia would never have made the plaintiff a cripple in any degree. Neither she nor her friends would have

been aware that her leg had been broken, from any sensations she would experience or lameness she would exhibit.

It remains only to speak of the fracture of the radius. The best surgical authority (quoted above) has justified Dr. Loomis in failing to recognize it in the very unusual form in which it occurred. Had the patient remained under his care after the gradual displacement which produced the present deformity, no doubt he would have recognised it. Our present inquiry, however, is whether the existing deformity of the wrist is sufficient ground on which to rest an action. An examination of the evidence does not give us much light upon the subject. Mrs. Closson testifies that she is not able to do with her hand all the things she could before the injury. But the exact extent to which she is crippled, we have no means of knowing—for it was not introduced in evidence, and the medical witnesses in general had no opportunity to make an examination of her. The two gentlemen who did see her were not questioned in such a manner as to elicit an exact description of the degree of deformity and loss of power. They testified in regard to dislocation of the ulna, and disagreed. Every good surgeon, on reading the evidence, will see that there could have been no dislocation of the ulna at the time of the accident; since it would be impossible for a medical man to avoid discovering such a condition of the parts by the eye—or, if this will not be allowed by those to whom Dr. Loomis is a stranger, we may say that the wrist-joint could not have all its motions (as it had, by the testimony of both plaintiff and defendant), had dislocation of the ulna existed. Any other discrepancies of the medical witnesses in relation to the wrist may be reconciled by the explanation that the fact was not always kept in sight in the examination by counsel, that the fracture in question was *transverse;* much of the testimony related merely to fracture of the lower end of the radius, as it usually is, oblique, and necessarily attended with over-riding of the fragments, by the contraction of the extensor and flexor muscles of the radial side of the wrist, and consequent deformity that could not be overlooked by any physician, and that certainly did not exist four days later, when the patient said to the physician that "he need not trouble himself any more about the wrist," for "that is well enough." If there was no dislocation then, there is none now, unless the result of some subsequent injury. We have, then, no means of knowing to what extent the plaintiff is limited in the use of her hand. She seemed to have no difficulty in grasping her crutch, and her witnesses gave no testimony as to her inability to use it.

Upon what ground, then, was this suit brought? Can any one, after a careful perusal of the evidence, believe that it was undertaken in the honest conviction of the justice of her cause—in the belief not only that she was a cripple for life, but that the man against whom she made this accusation, and from whom she hoped to wring enough to give her a living for the rest of her days, had

been guilty of a wrong, had mal-treated and wilfully neglected her? We know not whether this suit was brought of her own free will or at whose instigation—whether from ignorance and cupidity on her part or on that of her friends. But at whatever door lies the sin of so flagrant an attempt to injure the reputation and seriously lessen the means of a high-minded, faithful and very competent young surgeon, the instigator has a great wrong to answer for. How can we believe that the woman who would sue the physician* who for thirty years had been prompt to answer her frequent calls for professional aid—much of the time without money and without price†—on so slight grounds as are shown in the evidence, could have any just claim in any case in which she might attempt to recover damages? Does not the fact that she brought an action against Dr. Campbell, who had no connection whatever with her case—and only saw her in a five minutes' call on the morning after the injury—does it not prove the utter baseness of the ground taken by her and her friends? Why was the physician who had charge of her passed by, and another selected for a suit? We cannot understand it, according to any honest mode of interpretation. We have observed in another similar case the principal passed by in favor of him who was at the most only an accessory; and we confess that if we were about to attempt to extort money from another, we too should select the man advanced in life, who in his years of toil had filled his purse full enough to repay the robber, rather than risk our success in attempting the pockets of the young surgeon whose character and expectations of future prosperity were all his wealth.

If there must ever be ignorance so gross and avarice so unprincipled, let us be thankful that the poor and the unenlightened will often find counsellors actuated by higher motives than the paltry profits of a suit, and so honest as to use the influence which they possess over their clients to prevent rather than forward so ill-judged an action.

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* Dr. Campbell.

† During a part of the thirty years Dr. C. had given her his services, and a part of the time she had paid something, but she was in debt to Dr. Campbell $200 on this account at the time she sued him.